

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MIKE LITTLE GAS COMPANY, INC.)	
)	
_____)	CASE NO. 91-202
)	
ALLEGED VIOLATION OF KRS 278.160)	

O R D E R

The Commission initiated this proceeding to determine whether Mike Little Gas Company, Inc. ("Mike Little") was charging rates for service in excess of those set forth in its published rate schedules. As Mike Little admits charging unauthorized rates, the only issue before the Commission is whether it willfully violated KRS 278.160(2).¹ We find that Mike Little did and should be assessed a penalty of \$300 for its willful violation.

Mike Little is a Kentucky corporation which owns, operates and manages facilities used in connection with the distribution and sale of natural gas to the public for compensation. It serves approximately 490 customers in portions of Floyd County, Kentucky.

¹ "No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules."

On June 26, 1991, the Commission ordered Mike Little to show cause why it should not be penalized pursuant to KRS 278.990(1) for its alleged violations of KRS 278.160(2). This action followed the Commission's receipt of a Commission Staff Report which alleged that Mike Little was charging rates for service which exceeded its published rate schedules. A hearing on the alleged violations was held on September 27, 1991.² Following the hearing, Mike Little submitted a written brief.

Mike Little does not dispute allegations that it violated KRS 278.160(2). Mike Little Vice-President Daniel C. Greer testified that, from January 1, 1991 until May 31, 1991, Mike Little charged rates which exceeded its published rate by 3.7 cents per 1,000 cubic feet (Mcf) of natural gas.³ Approximately \$905.86 in excess of authorized rates was collected.⁴

KRS 278.990(1) authorizes the Commission to assess a civil penalty from any utility which "willfully violates" any provision of KRS Chapter 278. Mike Little contends that the assessment of a penalty is not appropriate in this instance as its violation was not willful. It asserts that a willful violation must be "with a

² At the hearing, Mike Little presented two witnesses: its Vice-President, Daniel C. Greer, and Daniel L. Frutchey, General Counsel of Kentucky West-Virginia Gas Company. Jordan Neel, a member of Commission Staff, also testified.

³ Transcript of Evidence ("T.E.") at 85, 105-106. See also Response of Mike Little to Commission Order dated July 29, 1991, Item 5.

⁴ T.E. at 105-106.

bad purpose, an evil purpose, without ground for believing the act to be lawful, or with an evil intent without justifiable excuse."⁵

Mike Little's position is contrary to existing legal precedent. For civil and administrative proceedings "willful conduct is most often defined simply as that which is intentional, rather than inadvertent or accident." Hager v. District of Columbia Dept. of Consumer and Regulatory Affairs, 475 A.2d 367, 368 (D.C. App. 1984). In Woods v. Corsey, 200 P.2d 208 (Cal. Dist. Ct. App. 1948), which involved a civil violation of the Emergency Price Control Act, the California Court of Appeals found that a willful violation was "one which is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law." Id. at 211. Similarly, in Nugar v. State Insurance Commissioner, 207 A.2d 619 (Md. 1965), which involved an appeal of an administrative agency's revocation of two insurance agents' licenses for willfully violating an insurance statute, the Maryland Court of Appeals declared "willful violation" to mean "an intentional act of omission or commission." Id. at 625.

In Kentucky, "[t]he word 'willful' in its general acceptance means intentionally, not accidentally nor involuntarily." Muncy v. Commonwealth, 97 S.W.2d 606, 609, 265 Ky. 730, 736 (1936). Proof of ill will is not a requisite element of willfulness. Louisville & N. R. Co. v. George, 129 S.W.2d 986, 989, 279 Ky. 24 (1939).

⁵ Brief of Mike Little, 9.

Consequently, no evidence of ill will, evil intent, or malice is necessary to prove that an act was willfully performed.⁶

The record clearly shows that Mike Little knowingly violated KRS 278.160(2). The utility has filed several rate adjustments in recent years and is familiar with the statutory framework for changing its rates.⁷ Although the utility knew that customers could be charged only filed rates, it unilaterally and without notice to this Commission charged rates which differed from its filed rates.⁸ It continued charging these unauthorized rates until ordered to cease.⁹

On January 24, 1991, Mike Little applied for and was granted a purchased gas adjustment ("PGA") to recover surcharges assessed by its supplier, Kentucky-West Virginia Gas Company ("Kentucky-West").¹⁰ According to Greer, this filing failed to consider line loss recovery. Upon making this discovery, Greer ordered that customers be billed at rates higher than the filed rates to ensure recovery of the line loss component. At the same

⁶ See, e.g., Case No. 90-172, Kentucky Utilities Company, Order dated December 4, 1990.

⁷ T.E. at 118.

⁸ Id. at 80, 119.

⁹ Id. at 85.

¹⁰ Case No. 90-077-B, Notice of Purchased Gas Adjustment Filing of Mike Little Gas Company, Order dated February 1, 1991.

time, Mike Little attempted to change its filed rates.¹¹ On February 5, 1991, Mike Little petitioned the Commission for emergency relief to recover this component.¹² It subsequently withdrew its petition and sought to amend its PGA clause to allow for such recovery.¹³ None of these proposed rate changes took effect. Throughout this period, Mike Little's representatives were repeatedly advised by Commission Staff that the utility could charge only its filed rates.¹⁴

The Commission cannot accept the argument that Mike Little was only collecting what it was entitled to collect - rates sufficient to cover the Kentucky-West surcharge. KRS Chapter 278 sets forth the procedures for seeking a rate adjustment. A utility may not ignore these statutory procedures nor will expedience excuse compliance with them. Failure to penalize Mike Little for its conduct will only encourage other utilities to act in a similar fashion. The resulting chaos would undermine all efforts at the orderly regulation of utility rates.

After review of the evidence of record and being otherwise sufficiently advised, the Commission finds that:

¹¹ T.E. at 110.

¹² Case No. 91-045, Application of Mike Little Gas Company, Inc. for Emergency and Extraordinary Rate Relief.

¹³ Case No. 91-134, Tariff Filing of Mike Little Gas Company, Inc. to Revise the Purchased Gas Adjustment Clause.

¹⁴ T.E. at 77-79; Response of Mike Little to the Commission's Order dated July 29, 1991, Item 2.

1. From January 1 through May 31, 1991, Mike Little assessed and collected rates in excess of those set forth in its filed tariffs. A total of \$905.86 in excess of authorized rates was collected during this period.

2. Mike Little willfully violated KRS 278.160(2) by assessing and collecting unauthorized rates.

3. Mike Little should be assessed a penalty of \$300 for its willful violation of KRS 278.160(2).

4. All amounts collected in excess of authorized rates should be refunded.¹⁵

IT IS THEREFORE ORDERED that:

1. A penalty in the amount of \$300 is assessed against Mike Little for its failure to comply with KRS 278.160(2).

2. Mike Little shall pay the assessed penalty within 20 days of the date of this Order by certified or cashier's check made payable to "Treasurer, Commonwealth of Kentucky." Said check shall be delivered to Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

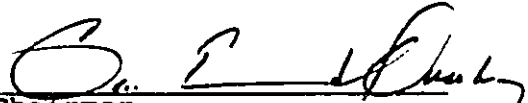
3. Within 60 days of the date of this Order, Mike Little shall refund all amounts collected in excess of its filed rates. This refund shall be made by either direct payment or bill credit.

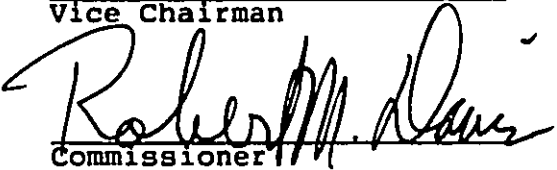
¹⁵ While the payment of interest on all funds improperly collected is ordinarily appropriate, the Commission has refrained from requiring it in this case because interest on the amounts involved would be de minimis.

4. Within 30 days of the completion of the refund, Mike Little shall file with the Commission a summary statement showing a reconciliation of customer billings and the amount refunded.

Done at Frankfort, Kentucky, this 19th day of December, 1991.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman

Commissioner

ATTEST:


Executive Director